

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 843 of 2007

Allahabad this the 07th day of February, 2012

Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD
Hon'ble Ms. Jayati Chandra, Member-A

Hemant Kumar Gupta aged about 57 years, Son of Late Budhu Lal,
Resident of 35-C/2, Jayantipur, Dhooman Ganj, Allahabad.

Applicant

By Advocate: Mr. Ashish Srivastava

Vs.

1. Union of India through Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
2. Sr. Divisional Mechanical Engineer, North Central Railway, Allahabad Division, Allahabad.
3. Sr. Divisional Mechanical Engineer O & F, Allahabad Division, Allahabad.
4. The Assistant Diesel (now re-designated) Divisional Mechanical Engineer, North Central Railway, Allahabad Division, Allahabad.

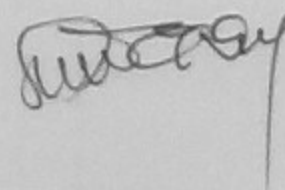
Respondents

By Advocate: Mr. Anil Dwivedi

ORDER

Instant O.A. has been instituted for the following
relief (s): -

"(ii) This Hon'ble Tribunal may be pleased to direct the respondents to make payment of salary and entire arrear of salary with 18% interest thereupon.



(iv) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.

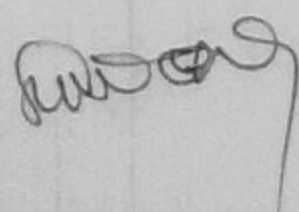
(v) Award the costs of the original application in favour of the applicant.

(vi) This Hon'ble Court may be pleased to allow the applicant to join services at Loco Shed, Allahabad.

(vii) This Hon'ble Court may be pleased to direct the respondent to give all consequential promotion which has been given to the juniors to the applicant during this period."

2. Pleadings of the parties, in brief, are as follows: -

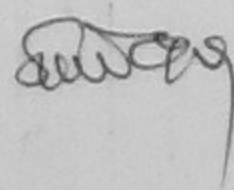
It has been alleged by the applicant that he was initially appointed as Cleaner by way of appointment letter dated 18.02.1976 and posted in the Loco Shed, Allahabad. Thereafter, he was promoted as Diesel Assistant, and further as Diesel Shunter on 22.08.1997. However, the duties assigned to the applicant that of Assistant Loco Foreman during this period. A transfer order was issued by the respondents on 22.05.1998 transferring the applicant from Allahabad Loco Shed to Kanpur Loco Shed. The applicant was shocked by receiving the transfer order as there was no administrative exigency rather there was shortage of working hands in the Loco Shed, Allahabad. Hence, a representation was preferred by the applicant to respondent No. 2 pleading all the facts, and after considering the facts, inquiry was conducted and finally on 22.07.1998 an order was passed by respondent No. 2



keeping the order of transfer suspended. As the order of transfer was suspended hence the respondent No. 3 was annoyed from the applicant, and he fraudulently involved the applicant in a departmental enquiry and put under suspension vide order dated 19.08.1998. Thereafter, applicant approached the respondent No. 2 for redressals of his grievance and under his direction vide order dated 24.09.1998 suspension of the applicant was revoked, and his suspension period was regularized. The order dated 24.09.1998 was served upon the applicant only on 26.09.1998, and in pursuance of the order, applicant joined the services at Allahabad, and had been continuously working there prior to receiving of charge sheet dated 25.11.1999. The applicant was served with a charge sheet imposing major punishment of unauthorized absence from 11.09.1998 till the date of issuance of charge sheet dated 25.11.1999. It was wrong to allege that the applicant was absent w.e.f. 11.09.1998 to 25.11.1999, and it is evident from perusal of the order dated 24.09.1998 that up to that date applicant was under suspension and there was no occasion to work in the department. It is alleged that it was the result of inaction of respondent No. 3 who was interested to keep the applicant in the strength of subordinate official on one or the other pretext. He was trying to keep the applicant out

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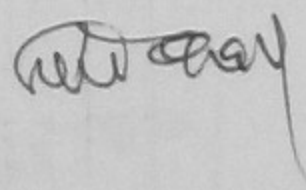
of his subordinates. The charge sheet dated 25.11.1999 was proceeded and finally no charge was proved against the applicant vide order dated 03.05.2002 and the applicant was put back to duty in the office of Senior Section Engineer. Again it was the high handedness of the respondent No. 3 that during the said period from 1998 to 03.05.2002, applicant was neither paid the salary nor any subsistence allowance and hence the representation was preferred on 03.05.2002 for payment of arrears of salary, which was arbitrarily withheld by respondent No. 3. After joining on 25.05.2002, applicant had been continuously reiterating his grievance regarding payment of arrears for salary but the respondent No. 3 never agreed to pay. Certain clarifications were made regarding posting of the applicant ^{with R} by the Loco Shed, Allahabad ^{by R} from respondent No. 3. Again a representation was submitted by the applicant but nothing was done, and again on 08.03.2003 a detailed representation was submitted to respondent No. 3 to permit the applicant to work at Allahabad as vide order dated 22.07.1998 the transfer order in respect of the applicant dated 22.05.1998 was made ineffective. Consequently, applicant filed O.A. No. 548/2004, which was disposed of by the Tribunal with a direction to the respondents to decide the pending representation of the applicant by passing a reasoned and



speaking order within the specified period, and the applicant was also required to resume the duty. However, again the applicant was not permitted by the respondents to join the duty rather it was provided vide order dated 29.10.2004 that he must resume the duty at Loco Shed, Kanpur and then to submit the representation.

Thereafter, a Contempt Petition was preferred but in view of assurance given by the respondents, the Contempt Petition was withdrawn. Thereafter, as nothing was done, applicant moved an application for revival of the Contempt Petition but that application was rejected. As the respondents are not permitting the applicant to resume the duty and not paying the salary hence, the O.A.

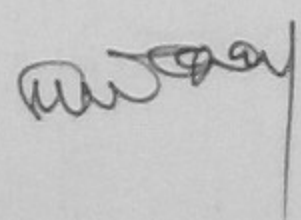
3. The respondents contested the case, filed the Counter-Reply and denied from the allegations made in the O.A. It has been alleged that as per direction of the Tribunal in O.A. No. 548/2004, representation of the applicant was decided vide order dated 15.12.2004, and vide this order applicant was posted at Loco Diesel Shed, Kanpur under SSE/Loco/CNB but he failed to resume his duty at Kanpur. Further, the applicant was directed to resume the duty vide order dated 15.02.2005 and 10.05.2006, and considering this fact, Contempt Petition, filed by the applicant, was also dismissed. It has further



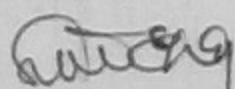
been alleged that while the applicant was on duty at Allahabad Yard, due to his carelessness, an accident took place of derailment at Allahabad Yard, and due to this reason, applicant was put under suspension. A departmental enquiry was ordered as per rules. But later on, respondent No. 2 revoked the order of suspension vide order dated 24.09.2008. It is alleged that whatever actions regarding suspension and revocation of the applicant taken, were according to rules. Further vide order dated 03.05.2002, applicant was directed to resume the duty subject to submission of medical certificate. The main contention of the respondents is that as the applicant failed to resume his duty at Kanpur, and he remained ^{on} unauthorized absent, hence the charge sheet ^{was} issued and salary was not paid to the applicant. It is claimed that the O.A. lacks merit hence, liable to be dismissed.

4. We have heard Sri Ashish Srivastava, Advocate for the applicant and Sri Anil Dwivedi, Advocate for the respondents; and perused the entire facts of the case.

5. Learned counsel for the applicant narrated the chequered history of harassment of the applicant at the hand of respondent No. 3. Moreover, from perusal of facts, as stated in the O.A., it is evident, on the face of it,

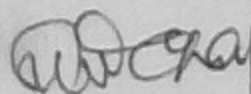


that the applicant was put to unnecessary harassment by respondent No. 3. It is material to state that while the applicant was posted in the Loco Shed, Allahabad, he was transferred as Assistant Loco Foreman to Kanpur Loco Shed on administrative ground. No reason has been mentioned in the transfer order (annexure A-1) but for the reasons best known to the respondents either of their own or on the initiation of the applicant and others, kept the transfer order dated 22.05.1998 pending till further orders. It has not been mentioned in the order dated 22.07.1998 that up to what time the order of transfer shall remain suspended or pending. The applicant's name is at serial No. 1 in the order dated 22.07.1998 (annexure A-2). Hence, the transfer order of the applicant was kept pending till further orders. It was also further provided that the staff mentioned in annexure A-2 may be allowed duty at Allahabad and their working reports should be submitted to this office every fortnightly without fail. The transfer orders of remaining staff stand good. Vide order dated 22.05.1998 (annexure A-1) other persons were also transferred at different place but the transfer orders of three persons including the applicant were kept pending till further orders. It has also been alleged by the applicant that without serving any order or assigning any reason, the applicant was put under suspension for



~~denying~~ the transfer order dated 22.05.1998. Each and every facts of the O.A. has not been replied by the respondents specifically in clear and unequivocal terms. It was expected from the respondents to controvert the allegations made in the O.A. specifically in clear and unequivocal language.

6. We have not found in the entire file any order of transfer or suspension but the applicant's Advocate stated that the applicant was suspended with effect from 10.09.1998. From perusal of annexure A-3 it is evident that an order was passed by the respondents regarding suspension of the applicant. It shows that the applicant was put under suspension vide order dated 10.09.1998. We are not able to ascertain that on what ground applicant was put under suspension. It is stated by the applicant's Advocate that as the applicant failed to comply the transfer order dated 22.05.1998 hence he was put under suspension. Presuming what the applicant's Advocate saying is correct because it has not been controverted by the respondents specifically that the applicant was put under suspension vide order dated 10.09.1998. But the suspension order of the applicant, on the face of it, shows inaction on the part of the respondents. If the applicant was put under suspension

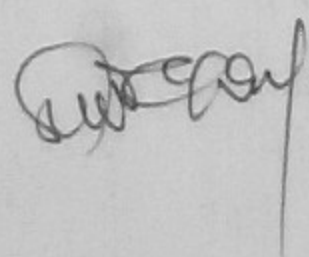


due to defying the transfer order dated 22.05.1998 then this contention of the respondents is absolutely false because the respondents themselves kept the order of transfer dated 22.05.1998 pending till further orders of three employees including the applicant hence there could not have been any reason for putting the applicant under suspension vide order dated 10.09.1998. All these facts might have been brought in the notice of the respondents hence the order dated 24.09.1998 was passed by respondents, and vide this order the suspension order dated 10.09.1998 was revoked. All these facts and circumstances show the high handedness of the respondent No. 3. Moreover, it has also been argued by learned counsel for the applicant that the order of revocation was received by the applicant on 26.09.1998 but surprisingly learned counsel for the respondents argued that the order was passed by the respondents, which is annexure A-4 of the O.A. From perusal of Annexure A-4, it is not clear that on which date it was passed. But this order itself shows that this order was passed under some misunderstanding or on the wrong perception of the facts. It has been alleged in this suspension order that the applicant failed to resume the duty w.e.f. 11.09.1998 till date without any intimation and that he is on unauthorized absence, and it is against the

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provisions of Railway rules and accordingly applicant was put under suspension. How the respondents can blow hot and cold in the same breath. By order dated 24.09.1998 respondents revoked the order of suspension dated 10.09.1998. When since 10.09.1998 the applicant was put under suspension then how he could have resume the duty w.e.f. 11.09.1998, as mentioned in annexure A-4, and moreover when this suspension order was revoked vide order dated 24.09.1998 then there is no justification to serve the charge sheet (annexure A-4). It also ought to have been revoked if passed earlier to the order dated 24.09.1998. But for the reasons best known to the respondents, no date has been mentioned on this order.

7. From perusal of annexure-4 A, it is evident that the opportunity of personal hearing was provided to the applicant by the Divisional Mechanical Engineer and from deliberations with the applicant, it was emerged that the applicant can be permitted to resume the duty with immediate effect and hence after fulfillment of all the formalities, applicant was ordered to resume the duty, and it was passed on 03.05.2002. When the salary etc. was not paid to the applicant and not permitted to resume the duty hence, a representation was made and when the representation was not decided by the respondents then,

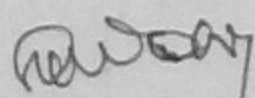


the applicant had to file O.A. No. 574/2008 before this Tribunal.

8. Annexure A-7 is the copy of order dated 01.09.2004 passed in O.A. No. 548/2004. From perusal of the Order, it is evident that the O.A. was disposed of at the admission stage itself. However, the respondent No. 2 was directed to decide the representation of the applicant by a reasoned and speaking order within three months from the date of receipt of a copy of the Order. Annexure A-9 is an order dated 29.10.2004, this order is purportedly passed by the respondents in pursuance of directions of the Tribunal in O.A. No. 548/2004. The direction was given to the respondents to decide the representation of the applicant by a reasoned and speaking order but it appears from perusal of this order that the respondents instead of deciding the representation of applicant directed him first to resume the duty at Kanpur Loco Shed and then submit the representation, as directed by the respondents. But, we failed to understand that how the respondents have interpreted the Order of this Tribunal, in their own manner. A clear cut direction was given by this Tribunal to decide the pending representation of the applicant, it means that either applicant ought to have been allowed to resume duty and then to decide his pending

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representation or if they were of the opinion that as the applicant defied the order of transfer hence he cannot be permitted to resume the duty but his representation ought to have been decided. But it appears that vide order dated 29.10.2004, a direction was given to the applicant firstly to resume the duty at Loco Shed, Kanpur and then submit the representation. It was wrong interpretation of the respondents. In this context, learned counsel for the applicant stated that there was no fresh transfer order, after the earlier transfer order was suspended in respect of the applicant. We also failed to notice that by which transfer order, applicant was transferred from Allahabad to Kanpur after withdrawal of the earlier order. The railway is such an organization that it is expected that the speaking order shall be passed by the respondents regarding transfer etc. How an employee is presumed that he is transferred to specific place without serving the order of transfer. The act of the respondents is unjustified, and moreover the order dated 29.10.2004 cannot be treated as a transfer order. This order was passed by the respondents in pursuance of direction of the Tribunal in earlier O.A., wherein direction was to decide the representation of the applicant. Moreover, an order was also passed on 15.02.2005 (annexure A-10) in compliance of the order passed by the Tribunal in the O.A. In this



letter, it has been alleged that a detailed and speaking order dated 15.12.2004 was passed on the representation of the applicant, and the applicant was posted to the Loco Shed Diesel, Kanpur. We have tried to ascertain from the respondents' Advocate that where is the transfer order dated 15.12.2004 by which the applicant was transferred but, no reply was given by him. Moreover, it cannot be ascertained from the facts of the case that whether a compound order was passed by the respondents as per direction of the Tribunal regarding disposal of the representation as well as transfer of the applicant from Allahabad to Kanpur.

9. When the applicant did not receive the copy of transfer order dated 15.12.2004, he was compelled to move an application under the R.T.I. Act to obtain a copy of transfer order dated 15.12.2004. A reply was given by the respondents of this query that the order dated 15.12.2004 was addressed to the D.R.M. and not to the applicant, and the applicant can peruse the records on depositing the required fee. Annexure-3 of the Amendment Application, filed by the applicant, is the copy of Order dated 15.12.2004. However, it cannot be inferred from perusal of the order that the representation of applicant was decided by this order rather it has been

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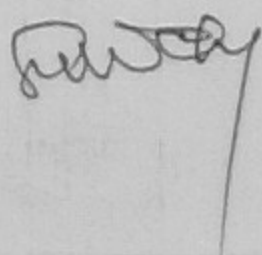
alleged in this order dated 15.12.2004 that vide order dated 29.10.2004 applicant was transferred from Allahabad to Kanpur Loco Shed but he failed to resume the duty at Kanpur, and an application was moved by the applicant for withdrawal of his posting and to decide his representation, which has already been decided by the competent authority. But the order passed on the representation of the applicant is not available on record, and whatever the respondents alleged that they have disposed of the representation vide order dated 15.12.2004 is not the order of disposing of the representation rather it is an order that in pursuance of the transfer order dated 29.10.2004 applicant failed to resume the duty. Hence, the respondents have not come with a clear cut case that what misconduct has been committed by the applicant, and whether as per direction of the Tribunal, the representation was decided of the applicant. We failed to understand that the respondents have got a justifiable reason to refuse the applicant to resume duty and to pay him the salary. All through out, applicant has been making efforts and endeavour to resume the duty at Allahabad after suspension of the earlier transfer order. The applicant was to ^{be} transferred ^{to} Kanpur by a separate order of transfer rather in the letter it has been mentioned that the applicant first resumes the

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duty at Kanpur and thereafter filed the representation. If the applicant was transferred from Allahabad to Kanpur then a speaking order might have been passed but that is not available in the file. The contention of the respondents is not at all tenable.

10. For the reasons mentioned above, we are of the opinion that whatever applicant has ~~been~~ alleged that he was put under harassment by the respondent No. 3, appears to be justified. There appears no justifiable reason for the respondents to refuse the applicant to resume duty at Allahabad Loco Shed and no order is available in the record regarding the order of transfer, and whatever the orders have been alleged, as transfer order, are not real transfer order, and it cannot be accepted as the order of transfer. We are of the opinion that the applicant is entitled to the relief (s) claimed. O.A. deserves to be allowed.

11. O.A. is allowed. The respondents are directed to permit the applicant to resume his duty at Loco Shed, Allahabad forthwith, and to pay him the salary as per rules. The applicant is also entitled for all consequential benefits. The respondents are directed to comply this Order within a period of three months from the date when a copy of this Order is received by them. The applicant



shall also produce a copy of this Order before the respondents at the earliest. No order as to cost.

S. Chandra

Member - A

Supriya Chandra

Sr. J.M./H.O.D.

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